

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 817 Emergency Medical Care and Treatment to Minors Without Parental Consent

SPONSOR(S): Massullo

TIED BILLS: **IDEN./SIM. BILLS:** SB 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee	16 Y, 0 N	Rahming	McElroy
2) Health & Human Services Committee			

SUMMARY ANALYSIS

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children. Parents generally have the right to be informed about, and give consent for, proposed medical procedures on their children. However, the state also has an obligation to ensure that children receive reasonable medical treatment that is necessary for the preservation of life.

Current Florida law requires a health care practitioner, or his or her employees, to obtain written parental consent before performing health care services on a minor child. Physicians licensed under chapters 458 and 459, F.S., may provide emergency medical care or treatment to a minor without parental consent when a child has been injured in an accident or is suffering from an acute illness, disease, or condition and delaying treatment would endanger the health or physical well-being of the minor. This is limited to care or treatment that is administered in either a hospital or college health service. Paramedics, emergency medical technicians (EMTs), and other emergency medical services personnel may provide emergency care or treatment in a prehospital setting, such as an ambulance or roadside.

Health care practitioners and health care facilities that violate parental consent requirements are subject to disciplinary action under their respective practice acts and may be subject to criminal penalties.

The bill authorizes physicians licensed under chapters 458 and 459, F.S., to provide emergency medical care or treatment to a minor without parental consent. This allows physicians to provide such care in prehospital settings, similar to EMTs and paramedics, or in hospital settings.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional Principles

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹ This fundamental liberty interest is rooted in the fundamental right of privacy from interference in making important decisions relating to marriage, family relationships, and child rearing and education.² The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:³

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.⁴ These rights may not be intruded upon absent a compelling state interest.⁵ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:⁶

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

Health Care

Parental Consent for Medical Treatment

Parents generally have the right to be informed about, and give consent for, proposed medical procedures on their children. However, the state also has an obligation to ensure that children receive

¹ *Santosky v. Kramer*, 455 U.S. 745, 748 and 753 (1982) (holding the fundamental liberty interest of natural parents in the care custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).

² *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); *See Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eighth grade violates the parents' constitutional right to direct the religious upbringing of their children); *See Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children's best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

³ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

⁴ *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent's constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁵ *Id.* See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001).

⁶ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

reasonable medical treatment that is necessary for the preservation of life.⁷ The state's interest diminishes as the severity of an affliction and the likelihood of death increase:⁸

There is a substantial distinction in the State's insistence that human life be saved where the affliction is curable, as opposed to the State interest where . . . the issue is not whether, but when, for how long and at what cost to the individual . . . life may be briefly extended.

Current law establishes parental consent requirements for health care services. Specifically, unless otherwise permitted by law, without written, parental consent:⁹

- A health care practitioner,¹⁰ or an individual employed by such health care practitioner, may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor.
- A provider, as defined in s. 408.803, F.S.,¹¹ may not allow a medical procedure to be performed on a minor child in its facility.

A parent may reject medical treatment for a child and the state may not interfere with such decision if the evidence is not sufficiently compelling to establish the primacy of the state's interest, or that the child's own welfare would be best served by such treatment.¹²

Medical Treatment without Parental Consent

Current Florida law provides exceptions for circumstances in which someone other than a parent may consent for medical care of a minor or provide medical care without parental consent.

Section 743.064, F.S., allows allopathic¹³ and osteopathic¹⁴ physicians to provide emergency medical care or treatment to a minor without parental consent when a child has been injured in an accident or is suffering from an acute illness, disease, or condition and delaying treatment would endanger the health or physical well-being of the minor. This is limited to care or treatment is administered in either a hospital or college health service. Paramedics, emergency medical technicians (EMTs), and other emergency medical services personnel may provide emergency care or treatment in a prehospital setting, such as an ambulance or roadside.¹⁵

Even in emergency situations, medical treatment can only be provided without parental consent if:¹⁶

- The child's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the child to the hospital.
- The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.

The hospital must notify the parent or legal guardian as soon as possible after the emergency medical care or treatment is administered and document in the hospital records the reason parental consent was not initially obtained. This must include a statement from the attending physician that immediate emergency medical care or treatment was necessary for the child's health or physical well-being.¹⁷

⁷ *Von Eiff v. Azicri*, 720 So. 2d 510, 515 (Fla. 1998).

⁸ *M.N. v. S. Baptist Hosp.*, 648 So. 2d 769, 771 (Fla. 1st DCA 1994).

⁹ S. 1014.06, F.S.

¹⁰ S. 456.001, F.S.

¹¹ "Provider" means any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

¹² *Id.*

¹³ Physicians licensed under ch. 458, F.S.

¹⁴ Physicians licensed under ch. 459, F.S.

¹⁵ For example, an ambulance or roadside.

¹⁶ S. 743.064(2), F.S.

¹⁷ S. 743.064(3), F.S.

Section 743.0645, F.S., establishes a list of people, by priority, who may consent to the medical care or treatment of a minor in instances where the treatment provider is unable to contact the parent or legal guardian and the provider has not been given contrary instructions. Specifically, the following people may consent, in this order:

- A health care surrogate or a person with power of attorney to provide medical consent for the minor;¹⁸
- The stepparent;
- The grandparent of the minor;
- An adult brother or sister of the minor; or
- An adult aunt or uncle of the minor.

If a parent or legal guardian cannot be reached while the child is committed to the Department of Children Families or the Department of Juvenile Justice,¹⁹ then the following individuals may consent to the medical care or treatment of a minor, unless the parent or legal guardian has expressly stated otherwise.²⁰

- The caseworker, juvenile probation officer, or person primarily responsible for the case management of the child.
- The administrator of the state-licensed facility²¹ or state-contracted or state-operated delinquency residential treatment facility where the child is committed.

In both of these instances, the treatment provider must document the reasonable attempts made to contact the parent or legal guardian in the minor's treatment records, and must notify the parent or legal guardian as soon as possible after the medical care or treatment is administered.²²

Health care practitioners and health care facilities that violate parental consent requirements are subject to disciplinary action²³ under their respective practice acts and may be subject to criminal penalties.²⁴

Effect of Proposed Changes

The bill authorizes physicians licensed under chapters 458 and 459, F.S., to provide emergency medical care or treatment to a minor without parental consent. This allows physicians to provide such care in prehospital settings, similar to EMTs and paramedics, or in hospital settings.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 743.064, F.S., relating to emergency medical care or treatment to minors without parental consent.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹⁸ A health care surrogate designation under s. 765.2035, F.S., executed after September 30, 2015, or a power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual who executes the health care surrogate for a minor or power of attorney, s. 743.0645(2)(a), F.S.

¹⁹ Specifically, under chs. 39, 984, or 985, F.S.

²⁰ S. 743.0645, F.S.

²¹ S. 393.067, F.S., licensed facilities for individuals with developmental disabilities; s. 394.875, F.S., licensed mental health facilities for children and adolescents; s. 409.175, F.S., licensed family foster homes, residential child-caring agencies, and child-placing agencies.

²² S. 743.0645(2)-(4), F.S.

²³ S. 456.072(1), F.S., provides grounds for disciplinary action against health care practitioners. S. 408.813, F.S., authorizes the Agency for Health Care Administration to impose administrative fines against providers for violations of its regulations.

²⁴ Violators commit a first-degree misdemeanor, which is punishable by a fine of up to \$1,000 and imprisonment of up to one year. S. 1014(5), F.S.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES